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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte John L. ANDERSEN

Appeal 2009-3238
Application 10/768,222¹
Technology Center 3600

Decided:² April 10, 2009

Before JAMESON LEE, RICHARD TORCZON, and MICHAEL P.
TIERNEY, *Administrative Patent Judges*.

TIERNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Real Party of Interest in this case is Builder's Best, Inc. (App. Br. 2)

² The two-month period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, Builder's Best, Inc. under 35 U.S.C. § 134(a) from a final rejection of claims 1-17. Appellant requests reversal of the Examiner's rejection of those claims. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

References Relied on by the Examiner

Simon	2,752,217	Dec. 21, 1953
Harpenau	6,419,102 B1	Jul. 16, 2002
Mustoe	6,938,640 B2	Sep. 6, 2005

The Rejections on Appeal

The Examiner rejected claims 1-7 and 9-17 under 35 U.S.C. § 103(a) as unpatentable over Mustoe (U.S. 6,938,640 B2) in view of Simon (U.S. 2,752,217).

The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as unpatentable over Mustoe (U.S. 6,938,640 B2) in view of Simon (U.S. 2,752,217) and further in view of Harpenau (U.S. 6,419,102 B1).

The Invention

The invention relates to in-wall housings for venting clothes dryers. The housings can be attached to a wood wall stud of a house or other building through the use of standoffs that attach and hold the housing. (Spec., p. 1; App. Br., Claims App'x.).

Claims 1, 10 and 17 are independent claims. Appellant argues claims 1, 10, and 17 together, with claims 2-7 and 10-17 standing or falling together with independent claims 1, 10, and 17. Appellant argues claim 8 separately.

Claim 1 is illustrative of the claimed invention and is reproduced below:

1. A housing for dryer venting comprising:
a top wall, a bottom wall, and two side walls, that
combined define an inner space sized to house a portion of
venting attached to a clothes dryer;
a front face plate extending from at least one of the walls;
and
a plurality of standoffs extending rearwardly from the
front plate wherein each of the standoffs has a portion adapted
to attach to a wood stud to hold the housing in place.

(App. Br., Claims App'x.). Claim 8 depends from claim 4, which depends from claim 1, where claim 8 requires top, bottom and side walls be at angle of from 90.5 to 92.5° degrees with respect to a rear wall. (*Id.*).

B. ISSUE

1. Has Appellant shown that the Examiner erred in determining that attaching cabinets to wall studs represents analogous art?
2. Has Appellant shown that the Examiner erred in determining that the combined teachings of Simon and Mustoe provide reason to one of ordinary skill in the art to attach dryer housings to wall studs via rearwardly extending standoffs?
3. Has Appellant shown that the Examiner relied upon impermissible hindsight in relying upon three references to arrive at the claimed invention of claim 8?

C. FINDINGS OF FACT

Mustoe

1. Mustoe teaches a housing ("box") assembly 20, 22 for the in-wall (recessed) mounting of a dryer exhaust hose 40. (Mustoe, col. 3, ll. 22-25; col. 4, ll. 43-46; figs. 1, 3, and 5-6).
2. Mustoe, figures 1 and 3, depicted below, respectively show the structure and mounting detail of the housing:

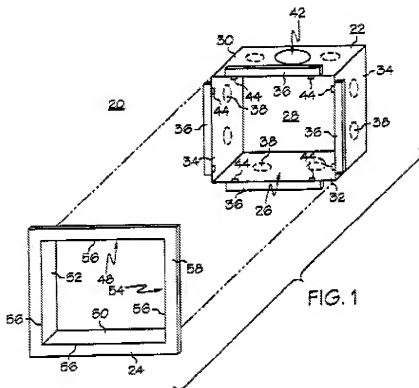


Figure 1 is depicted above and shows the shape of the housing 22.

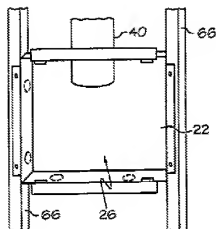


FIG. 3

Figure 3 is depicted above and shows the housing 22 mounted between two wall studs 66.

3. Mustoe teaches flanges 36, designed to be fastened to wall studs 66 that are disposed behind the flanges 36. (*Id.*, col. 4, ll. 47-49; fig. 3).
4. The Examiner found that the fastening means taught by Mustoe for attaching flanges 36 (called a front-face plate by Examiner) to the studs 66, amounted to the use of rearwardly extending fasteners. (Ans., p. 4 and 7).
5. The Appellant has not disputed the Examiner's finding that Mustoe teaches rearward extending fasteners, extending from a front face plate.

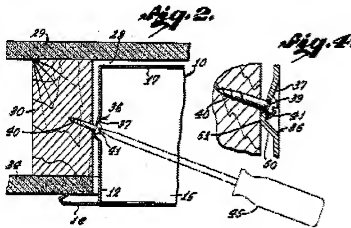
Simon

6. Simon teaches an improved means for installing cabinets, wherein the improvement is directed to overcoming time-consuming and inaccurate installations, associated with conventional in-wall housings. (Simon, col. 1, ll. 18-28).
7. Simon teaches that its invention is directed to cabinets, but for convenience Simon states that its invention will be described as a medicine

cabinet with the understanding that the principles “can be applied with equal cogency to other types of cabinets.” (*Id.*, col. 1, ll. 18-22).

8. Simon’s medicine cabinet, has recesses 36, defined by lateral protuberances 50 having arcuate edges 51 that engage adjacent surfaces of wall studs 30 and serve to resist dislodgement of the cabinet 10. (*Id.*, col. 3, ll. 13-15 and 29-40).

9. Simon, figures 2 and 4, depicted below, show a protuberance 50, an arcuate edge 51 of the protuberance, and a wall stud 30:



Figures 2 and 4, depicted above, show a protuberance, an arcuate edge of the protuberance, and a wall stud.

10. Simon teaches that the arcuate edges 51 of the protuberances 50 act as wedges or dogs to resist dislodgement or outward movement of the cabinet. (Simon, col. 3, ll. 31-38).

11. Simon further teaches that the arcuate edges 51 of the protuberances reduce both the load on the fasteners used to mount the cabinet and also their tendency to pull out of the studs 30. (*Id.*, col. 3, ll. 38-41).

12. Simon additionally teaches that the arcuate edges 51 are designed so that they bite into the inner edges of the stud 30 in the manner of a hook,

such that removal of the cabinet is prevented even in the absence of nails or screws. (*Id.*, at col. 3, ll. 46-53).

13. The Examiner found that Simon's accurate edges 51 amounted to a beveled portion that acted to assist in boring the standoffs ("protuberances 50") into the wood stud. (Ans., p. 4-5).

Harpenau

14. Harpenau teaches a wall outlet box for a dryer vent exhaust conduit (Harpenau, Abstract, col. 3, ll. 62-63).

15. The Examiner found that Harpenau teaches a top wall, bottom wall, and side wall, that are at angles greater than 90 degrees with respect to the back wall. (Ans., p. 5 and 8).

16. Appellant did not dispute the Examiner's finding that Harpenau teaches a top wall, bottom wall, and side wall, that are at angles greater than 90 degrees with respect to the back wall.

D. PRINCIPLES OF LAW

An invention is not patentable under 35 U.S.C. § 103 if it is obvious. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1745-46 (2007). The determination of obviousness requires a suggestion of all limitations in a claim. *CMFT Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing, *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). The suggestion of all limitations however need not be literally expressed in the prior art. *In re Sheckler*, 438 F.2d, 999, 1001 (CCPA 1971). In particular, the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *KSR* at 1739.

E. ANALYSIS

The Rejection of Claims 1-7 and 9-17

The Examiner determined that Appellant's claims 1-7 and 9-17, which are directed to dryer unit housings having standoffs, were obvious over Mustoe and Simon. The Examiner found that Mustoe's dryer vent housing comprises a top wall, a bottom wall, two side-walls, a rear wall attached to the top, bottom, and side walls, and a front face extending from the walls. (Ans., p. 4). The Examiner also found that Mustoe teaches rearward facing fasteners extending from the front face. (*Id.*, at p. 7). The Examiner acknowledged that Mustoe did not teach a plurality of standoffs. (*Id.*, at p. 4). The Examiner however found that Simon taught a cabinet having plurality of standoffs, which included beveled portions that assisted in boring the standoffs into wood and aided in holding the cabinet in place. (*Id.*). In view of Simon's teaching of standoffs, the Examiner concluded that it would have been obvious to one of ordinary skill to utilize the standoffs of Simon in place of the rearward facing fasteners of Mustoe to prevent the cabinet from being dislodged from the studs. (*Id.*, at p. 4-5 and 7-8).

Appellants contend that claims 1-17 and 9-17 are non-obvious over the prior art. The appellant states that the combination of Mustoe in view of Simon does not render the claims obvious, for the following reasons: (1) Simon is not analogous art; (2) Appellant's standoffs, unlike Simon's protuberances, "are used to protrude into a stud and assist in attaching the in-wall ventilation housing to a stud;" and (3) the combination of Mustoe and Simon does not teach a faceplate having rearward facing standoffs. Each of these issues is addressed below.

Analogous Art

Appellant argues that Simon is non-analogous art, because it is directed to a medicine cabinet, rather than a box for dryer ventilation. (App. Br., at p. 6).

References qualify as prior art for an obviousness determination only when analogous to the claimed invention. *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *Id.*

Appellant's field of endeavor is the attachment of in-wall box-like housings to building studs. Simon teaches that its invention is directed to cabinets, but for convenience, Simon states that its invention will be described as a medicine cabinet with the understanding that the principles "can be applied with equal cogency to other types of cabinets." (Simon, col. 1, ll. 18-22). Simon's cabinet, like Appellant's dryer housing, is a box-like structure that is designed to be mounted in a wall between two studs or other vertical members. (Simon, col. 1, ll. 15-17). Thus, as both Simon and Appellant's invention are from the same field of endeavor, attachment of in-wall boxes to studs, we conclude that Simon represents analogous art.

Additionally, Appellant's stated problem to be solved is the mounting of an in-wall box to a stud. More particularly, Appellant states that typical in-wall boxes have a lip extending around the face of the box, which requires extra caulking and/or drywall cutting steps during installation. (Spec. pgs. 1-2). Appellant seeks an in-wall box for dryer venting that is

less laborious to install. (*Id.*, at 2). Even if the cabinet of Simon were from a different field of endeavor, the teachings of Simon would have commended themselves to the inventor's attention, because Simon also relates to overcoming time-consuming and inaccurate installations associated with conventional in-wall housings. (Simon, col. 1, ll. 18-28). Accordingly, we find that the Examiner did not err in concluding that Simon was analogous art.

Protruding into Stud

Appellant contends that the protrusions of Simon do not protrude into a stud and assist in attaching the cabinet to a stud. (Rep. Br., p. 1). None of Appellant's claims explicitly require that the standoff "protrude into a stud."

There are three independent claims, claims 1, 10 and 17. Independent claim 1, requires a plurality of standoffs wherein each of the standoffs has a portion adapted to attach a wood stud to hold the housing in place. (App. Br., Claims App'x.). Independent claim 10 requires that at least one standoff have a beveled portion adapted to sink into a wood stud when pressure is applied to the housing. (*Id.*). Independent claim 17 requires the step of applying pressure against a housing to force a portion of the standoff into the wood stud. (*Id.*).

Simon discloses protuberances 50 having arcuate edges 51 that engage adjacent surfaces of wall studs 30 for the purpose of resisting dislodgement of the cabinet 10. (Simon, col. 3, ll. 29-40). Simon further teaches that the arcuate edges 51 are designed to bite into the inner edges of the stud 30 in the manner of a hook, such that removal of the cabinet is prevented even in the absence of nails or screws. (*Id.*, at col. 2, ll. 38-53). Accordingly, we agree with the Examiner and find that Simon describes

protuberances (standoffs) that meet the standoff limitations recited in Appellant's claims.

Rearward Facing Standoffs

Appellant contends that the combination of Mustoe in view of Simon does not teach the use of rearward extending standoffs. Appellant states that Simon's standoffs are located on the side, rather than on the face plate. (App. Br., p. 6). Appellant also states that common sense does not suggest the obviousness of the claimed invention. (*Id.*).

Obviousness, is not limited to the express teachings of a single prior art reference, but is based upon what the combined teachings of the prior art suggests to the person of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Mustoe describes the use of rearward engaging fasteners, extending from the front-face 36 to a stud 66 behind the face. Simon teaches that standoffs facilitate the installation of cabinets. One of ordinary skill in the art has ordinary creativity and is not an automaton. One of ordinary skill in the art would have recognized that Simon's standoffs, which Simon uses to fasten sidewalls, would also facilitate in the installation of Mustoe's "rearward" engaging fasteners. Accordingly, we find that the Examiner did not err in finding that the combination of Mustoe and Simon teach the use of rearward facing standoffs extending rearward from a front face plate.

We sustain the rejection of claims 1-7 and 9-17, under 35 U.S.C. §103(a), as obvious over the combination of Mustoe and Simon.

The Rejection of Claim 8

Claim 8 requires that Appellant's top wall, bottom wall and side walls be at an angle of 90.5 to 92.5° with respect to the rear wall. The Examiner held claim 8 to be obvious over Mustoe and Simon and Harpenau.

Harpenau teaches a dryer vent housing comprising a top wall, bottom wall, and side walls that are at an angle of greater than 90° with respect to the rear wall (Ans. p. 5). The Examiner found that one of ordinary skill in the art would have known and recognized that the angles claimed were suitable for dryer vent housings. (*Id.*). Based on these findings the Examiner concluded that use of the claimed angles would have been obvious to one of ordinary skill in the art, in view of Mustoe, Simon, and Harpenau, for the purpose of enabling the housing to fit in apertures that could not fit a straight walled box. (*Id.*, at p. 6 and 8-9).

Appellant contends that the addition of Harpenau to the combination of Mustoe and Simon amounts to hindsight. (App. Br., p. 6-7). In particular, Appellant contends that the use of three references (Mustoe, Simon, and Harpenau) to arrive at the claimed invention is a strong indicator of hindsight. (Reply Br., p. 1-2).

Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. Such a reconstruction is proper however, so long as it takes into account only knowledge, which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure. *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971). Moreover, the reliance on a large number of references in a rejection does

not, without more, weigh against the obviousness of the claimed invention. *In re Gorman*, 933 F.2d 982, 986 (Fed. Cir. 1991).

Harpenau teaches a dryer vent housing comprising a top wall, bottom wall, and side walls that are at an angle of greater than 90° with respect to the rear wall. Appellant does not dispute the Examiner's finding that it was known in the art that not all housing or apertures for in-wall boxes include straight walls or sides. Appellant also does not dispute the Examiner's finding that one of ordinary skill in the art would have appreciated that the selection of the claimed angles would permit the attachment of in-wall boxes to accommodate the fitting of the housing within an aperture. (Ex. Ans., pgs. 5-6). We conclude that the selection of the claimed angles for the in-wall box having rear facing standoffs would have been obvious to one of ordinary skill in the art as it combines known in-wall box elements (angled top/bottom/side walls) for their known purpose (accommodate the attachment of the in-wall box to a stud) to yield predictable results (ease of installation).

We sustain the Examiner's rejection of claim 8 under 35 U.S.C. §103(a), as obvious over the combination of Mustoe, Simon, and Harpenau.

F. CONCLUSION

Appellant has not shown that the Examiner erred in determining that attaching cabinets to wall studs represents analogous art.

Appellant has not shown that the Examiner erred in determining that the combined teachings of Simon and Mustoe provide reason to one of ordinary skill in the art to attach dryer housings to wall studs via rearwardly extending standoffs.

Appellant has not shown that the Examiner employed impermissible hindsight in demonstrating that claim 8 would have been obvious to one of ordinary skill in the art.

G. ORDER

The rejections of claims 1-7 and 9-12 under 35 U.S.C. § 103(a) as unpatentable over Mustoe in view of Simon is affirmed.

The rejections of claim 8 under 35 U.S.C. § 103(a) as unpatentable over Mustoe in view of Simon and Harpenau is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

rvb

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